

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 206 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
M S UNIVERSITY OF BARODA

Versus

GORDHANBHAI JOITABHAI PATEL & COMPANY  
-----

Appearance:

MR SN SHELAT with Mr. S.C. Shah for the appellant  
MR PV NANAVATI for Respondent No. 1  
-----

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. Appellant, M.S. University, Baroda, (original defendant), has filed this appeal under Section 96 of the Code of Civil Procedure, challenging judgment and decree dated July 31, 1981, passed by learned 2nd Joint Civil Judge (S.D.), Vadodara, in Special Civil Suit No.181 of

1986, by which decree, the appellant was directed to pay an amount of Rs.16,405.07 ps to the respondent-firm, with interest at the rate of 9% per annum on the amount of Rs.8942.07 ps from the date of the suit till payment.

2. The respondent is a registered partnership firm and doing business of building contractors at Vadodara. The appellant is a corporate body and educational institution. The University had invited tenders for construction of a hostel building for students of metaverigical course. The respondent had filled in the tender and its tender was accepted by the appellant-University, and, pursuant to acceptance of the tender, an agreement was executed between the University and the respondent for the construction of the hostel. The respondent had carried out the work of construction as per the terms and conditions of the agreement and had completed the building of hostel to the satisfaction of the University. As per the say of the respondent, the University had changed specifications of certain tender items and drawing of the said construction work after the respondent had begun the work as per the tender. It is averred that the respondent was, therefore, entitled to increased rates of such altered items. It is stated that the University had paid such amounts at the increased rate for certain items and did not pay the same for other items. It was further averred that the University had wrongly deducted amount of storage charges and watchman charges from the final bill of the respondent and had further delayed payment of the final bill. The respondent had claimed Rs.1667 towards payment for less measurement in respect of tender item nos. 6,13,14,15,16 17 and Items Nos.24, 35, 36 along with extra item No.6 on the ground of less measurements taken by the University. The respondent had also claimed Rs.5000/- towards cement storage charges and watchman charges wrongfully deducted by the University, and an amount of Rs.7463/- towards interest on the ground that payment of final bill was to be made within three months after completion of work according to the terms of the tender. It was averred that the appellant had delayed the payment of the final bill for a period of 1-3/4 years. The respondent, in all, claimed Rs.21,000/- from the appellant-University on various heads as stated above by filing Special Civil Suit No.181 of 1976.

3. The appellant-University filed its written statement at Exh.11, inter alia, contending that the suit filed by the respondent was time-barred and not maintainable in the present form. It was contended that the Court had no jurisdiction to entertain the suit. It was denied that the respondent was required

to do extra work as a result of changes made in the specification and drawings with regard to construction of hostel building. It was contended that the respondent was not entitled to claim any extra or increased rates in view of the terms and conditions of the agreement. It was denied that wrong measurements were taken for items Nos.6, 13, 14, 15 and 16. With regard to claim of Rs.7800/- in respect of construction of slab, it was contended that the respondent was paid for the said work as per the terms of the agreement and, therefore, it was not entitled to claim any more amount. It was further stated that the respondent was not entitled to interest on account of late payment of the final bill. It was submitted that the suit filed by the respondent was false and frivolous and deserved to be dismissed with costs.

4. On rival pleadings of the parties, the trial court framed issues at Exh.12. To prove the suit claim, the respondent examined Vallabhbhai Mahijibhai Patel, who was a partner of the respondent-firm, at Exh.72. The witness, during his deposition, produced various documentary evidence, such as certificate from the Registrar of Firms with regard to registration of respondent-partnership firm, correspondence between the respondent and the appellant-University, tender filled in by the respondent, true copy of the agreement, true copy of final bill, certified copy of measurement of work of construction carried out by the respondent, etc. to prove the case against the appellant. The appellant did not lead oral evidence.

5. Learned Judge, on appreciation of oral as well as documentary evidence, and arguments advanced by learned counsel for the parties, deduced that the respondent-firm was duly registered partnership firm. The trial court deduced that the respondent had failed to prove the claim of Rs.5000/- alleged to have been wrongly deducted from the final bill for item of storage charges of cement and watchman charges. The trial court further deduced that the suit filed by the respondent was not time-barred as contended by the appellant. On the basis of abovereferred to conclusion, the trial court passed a decree for Rs.16,405.07 ps with interest at the rate of 9% per annum on the amount of Rs.8942.07 ps from the date of suit till payment in favour of the respondent, which has given rise to filing of this appeal by the appellant-University.

6. Learned counsel for the appellant has taken me through entire oral as well as documentary evidence produced in the trial court. Learned counsel for the appellant has vehemently submitted that the suit filed by the respondent was hopelessly time-barred and the trial court has erred in not holding that the suit was filed beyond the period of limitation. Learned counsel for the appellant submitted that the respondent was paid for all the items of the tender agreement as per the rates agreed by the said agreement and the respondent was not entitled to get rates at the increased rates for extra items as claimed in the suit. Learned counsel for the appellant submitted that the trial court has erred in allowing the claim of Rs.7463/- on the head of interest for late payment of the final bill. Learned counsel for the appellant submitted that the respondent was paid all the charges of construction work carried out by it as per the terms and conditions of the tender agreement and, therefore, this appeal be allowed and the decree of the trial court be set aside.

7. Learned counsel for the respondent has supported the judgment and decree of the trial court. It may be stated that the respondent has not filed appeal or cross appeal in respect of the claim of Rs.5000/disallowed by the trial court on the head of storage charges and watchman charges deducted from the final bill.

8. Submission of learned counsel for the appellant that the present suit was time-barred and it was filed beyond period of limitation as prescribed under the Limitation Act, has no merit and deserves to be rejected. Submission of learned counsel for the appellant is that final bill was prepared on March 31, 1973 whereas the suit was filed on May 6, 1976, and, therefore, it was filed after period of three years. True copy of final bill Exh.57 indicates that, though the bill was prepared on March 31, 1971, the partner of the respondent has accepted the amount of final bill on May 28, 1973, with protest. Thus, the respondent had accepted payment of the final bill on May 28, 1973 with protest. Period of limitation would start to run from the date of receipt of the payment and not from the date of submitting the final bill as contended by learned counsel for the appellant. As the suit was filed on May 6, 1976 i.e. within three years from the date of payment of the final bill, i.e. May 28, 1973, the trial court was justified in holding that the suit filed by the respondent was not time-barred. Oral

evidence of the witness examined by the respondent indicates that Overseas and Assistant Engineer of the appellant-university had not taken measurements properly and had committed mistakes in calculating measurement of different items. Documentary evidence produced by the respondent proved that there was mistake in calculating measurement of different items as stated in the complaint. The trial court had rightly held that, because of mistake committed by Overseas and Assistant Engineer of the appellant-university in taking measurements, the respondent was entitled to claim Rs.1142.07 ps, and not Rs.1667.07 ps as claimed in the suit. I do not find any infirmity with the above finding recorded by the trial court.

9. Decree passed by the trial court for Rs.7800/- as claimed by the respondent on the head of difference of rates fixed under the contract for constructing 13 cm and 14 cm wide slab, is also quite legal and does not call for any interference in this appeal. It is borne out from the evidence of the witness examined by the respondent that it had carried out extra work of 14 cms thick slab of an area of 1485.75 sq.mtr instead of 160 sq.mtr. as stipulated in the agreement. Thus, the evidence of the witness of the respondent established that it had carried out work of 14 cm thick slab for extra area of 1300 sq.mtr. because of change of specification made by the appellant-university. Payment for the work of 14 cm thick slabs for extra area of 1300 sq.mtr is claimed at the rate of Rs.6/per sq.mtr. While claiming rate at Rs.6/- per sq.mtr. the respondent had relied upon the documents produced by the appellant itself. It was proved before the trial court that this extra item was done at the instance of the appellant-University. Document Exh.55, which was produced by the appellant-University, also proved that, because of change in specification, extra work of 14 sq.mtrs thick slab of an area of 1300 sq.mtrs. was carried out by the respondent. Thus, on the principle of 'quantum meruit' also, the respondent was entitled to claim Rs.7800/- on the head of work of extra items carried out by it as per change of specification by the appellant-University. Therefore, the decree passed on the said head by the trial court does not call for any interference in this appeal.

10. Submission of learned counsel for the appellant that the trial court was not justified in awarding interest on Rs.7463/- on the ground that the payment of final bill was delayed for 1.3/4 years, is devoid of

any merit and deserves to be rejected. The evidence of the respondent's witness Exh.72 indicated that construction work of hostel building was completed by the respondent on May 29, 1971, and, as per the terms and conditions of the agreement, the appellant was bound to pay amount as per the final bill on or before May 28, 1971, but, the said amount of the final bill was paid on May 28, 1973. Correspondence produced by the respondent showed that payment of final bill was delayed by the appellant-University without any rhyme or reason. Therefore, in my view, the respondent was entitled to claim interest at the rate of 9% per annum on the ground that payment of the final bill was delayed by 1.3/4 years. The decree passed by the trial court awarding sum of Rs.7463/- on the said head deserves to be confirmed.

11. The findings recorded and conclusions reached by the trial court are based on proper appreciation of oral and documentary evidence produced by the parties. The said findings do not suffer from any infirmity and do not call for any interference by this Court in this appeal. The appellant-University had led no evidence in support of its case. The documentary evidence produced by the appellant-University, on the contrary, established that the respondent was justified in claiming amount of Rs.1142.07 ps on the head of 'mistake in taking and calculating measurement', amount of Rs.7800/- for extra work carried out by the respondent and amount of Rs.7463 as interest because of late payment of the final bill. In my view, the decree passed by the trial court against the appellant for the sum of Rs. Rs.16,405.07 ps to the respondent-firm, with interest at the rate of 9% per annum on the amount of Rs.8942.07 ps. from the date of filing of the suit till payment, is eminently just and proper and does not call for any interference in this appeal.

12. As a result of foregoing discussion, the appeal fails and is dismissed with no order as to costs.

(M.H. Kadri, J.)

\*\*\*\*

(swamy)